Secrt. II-27—25,000—1

Law (General) (1934) Department

Jus SERIES.

G.O. No. 2132.

DATED 25-7-1934.

[Despatch Abstract.]

Criminal appeal - appeal against acquittal - accused 4 to 6 and enhanc
of sentence passed on accused 1 and 2 - Sessions Case No. 7/34 on the fi
of the Sessions Judge, South Canara - Declined.

C.F. 30.

LAW (GENERAL) DEPARTMENT.

L. P 5134 B
16/5/34

Received ..... 19 *Registered* 19

Subject.

Criminal Justice - S.C.7/34 - Sessions Court - South Kanara - Order of acquittal against some accused and inadequate sentence against the other accused - Appeal against acquittal - Proposal.

ENCLOSURES.
No. .....
.....
Spare copies .....

No. Ref.C.1-1942-M-34.

Station Mangalore, *Dated the* 12th May 1934.

From (Name) E. M. Gawne, Esquire, I.C.S.,
(Designation) District Magistrate of South Kanara.

To The Secretary to the Government of Madras
Law (General) Department,
Madras.

Sir,

I enclose herewith a copy of letter No. Cr. 12/34, dated 28.4.1934 of the Public Prosecutor, Mangalore in which he recommends the filing of an appeal against the acquittal of accused 4 and 5 in the Menal murder case on the ground that the 4th accused ought to have been convicted on his own retracted confession and that the 5th accused ought to have been convicted on the evidence of P.W.12 Korapolu as her statement was corroborated on all important points by important evidence in the case and the admissions of accused and 4. The Public Prosecutor states further that it is

necessary to urge the imposition of the death penalty in respect of accused 1 and 2 who have been sentenced only to transportation for life by the Sessions Judge.

2. The District Superintendent of Police who was consulted agrees with the Public Prosecutor and considers that the enhancement of sentence in the case of accused 1 and 2 and the appeal against acquittal of accused 4 and accused 5 and even accused 6 is called for in view of the fact that the murder was a brutal one. The prosecution had great difficulties to contend with since two at least of the prosecution witnesses were kept away from the Committing Court and the Sessions Court entirely by the influence of the rich ejman, accused 6. He states also that there is much high-handedness of this sort in some Bunt families in this district and that deterrent punishments in this case are desirable.

3. The Sessions Judge has given his reasons in paragraph 82 of the judgment why he disbelieved the evidence of P.W.12 and discarded the confessional statements of accused 1 and 4 as against accused 5. He has also given his reasons in paragraph 83 why he acquitted accused 4 disbelieving the evidence of P.Ws.12 & 15 who alone made incriminating statements against him and in paragraph 65 why he disbelieved his confessional statement. It has to be mentioned that the confessions were recorded by a senior Sub-divisional Magistrate. As regards inadequate sentences on accused 1 and 2, the Sessions Judge has given reasons in paragraph 86 of his judgment.

4. In view, however, of the strong recommendation of the Public Prosecutor, Mangalore supported by the District Superintendent of Police, I request the Government may be pleased to ask the Public Prosecutor, Madras to move

the High Court for enhancement of sentences on accused 1 and 2 and to file an appeal against the acquittal of accused 4 and 5 and also 6.

Your obedient servant,

District Magistrate.

12.5.34

Letter-from M.R.Ry. M. N. Prabhu Avl., B.A., B.L.,
Public Prosecutor, Mangalore.
To-the District Magistrate, South Kanara, Mangalore.
Dated-Mangalore, 28th April 1934.
No.- Cr.12/34.

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Sessions Case No.7/34 - Menal Murder Case.

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I have the honour to enclose herewith an advance copy of the judgment, which I got by the courtesy of the Superintendent, Saraswathi Printing Works Ltd., Mangalore, in S.C.No.7/34 - the sensational Menal Murder case - in which the ejaman of a very rich Bunt family (the 6th accused) got a junior member of his branch family most brutally murdered through hired assasins (accused 1 to 5) for the purpose of appealing against the judgment acquitting accused 4 and 5 and for enhancing the sentence passed on accused 1 and 2.

In my opinion, the 4th accused ought to have been convicted on his own retracted confession, which from the evidence in, and the circumstances of, the case any court will hold to be true. The Sessions Judge has not at all considered this case and it appears to me that in the stress of writing the judgment he ignored the 4th accused altogether - vide page 14 of the judgment.

The acquittal of the 5th accused also is wrong. The case against him rests on the evidence of P.W.12, Korapolu, the appreciation of which by the Sessions Judge is erroneous. The evidence of P.W.12, supported as it is by further discoveries in the case, ought to have been accepted by the court. The defects pointed out by the Sessions Judge about the evidence of this witness will, I think, be brushed aside by the High Court and there are very strong reasons for my opinion on that point which it is unnecessary for me to state here at length. The entire detection of the case was on account of the information given by this witness to the Police and her statements are corroborated on all important points by important evidence in the case and admissions of accused 1 and 4. This witness is a

poor woman who had to stand a severe [illegible] action with respect to very minor matters recorded [illegible] ments under Sections 162 and 164.

There are no extenuating circumstances to reduce the death penalty to one of transportation for life [illegible] accused 1 and 2 in a most brutal [illegible] which accused 1 and 2 took part [illegible].

I regret the 6th accused [illegible] justice in this case for want of enough [illegible], and though there is no doubt whatsoever that [illegible] to get the murder committed. The conduct [illegible] leaves no doubt on the matter, but as [illegible] clear that [illegible] cannot be convicted on the retracted confession of co-[illegible] without corroborative evidence against [illegible] corroborative evidence, his acquittal appears to [illegible] but, still the Public Prosecutor [illegible] matter as there are two confessions [illegible] evidence of corroboration and the further circumstance [illegible] in helping the prosecution till [illegible] wrong channel and absconding from [illegible] disclosure to the Police about [illegible] this is a strong circumstance [illegible] taken into consideration.

This is the case in which [illegible] Mainda Gowda and Koraga Gowda, [illegible] had been recorded, were kept out [illegible] and the case was committed without their [illegible] about which matter I had to make [illegible] occasion.

(Tr[illegible])

[illegible]

22

Law (General) Dept

C.No. 5134-B-

Endt.No. 5134 B-1 d. 21-5-34

Criminal appeal/~~and~~ Criminal revision petn.

Appeal against acquittal/~~and~~ Enhancement

of sentence/~~To set aside the order of discharge.~~ S.C./~~C.C./C.A.~~No. 7/34

on the file of the Sessions Judge, South Kanara

From the D.M., South Kanara
~~Commissioner of Police, Madras~~

Ref.No. C.1-1942-M/34, d. 12.5.34

Referred to the P.P./~~Crown Prosecutor~~

Madras, for opinion whether an appeal ~~and a criminal revn. petn~~

to the High Court against the judgment ~~for enhancement of sent to set aside the order~~

of the Sessions Judge, South Kanara ~~of sentence passed on the accused by the of discharge passed by the~~

acquitting the accused 4, 5 and 6 in S.C./~~C.C./C.A.~~

No. 7/34 on his file ~~is likely~~ and a criminal revision petition ~~to be successful.~~ He is requested to forward his

opinion as early as possible. ~~by the~~

Para 4 alp 3 CF

in the same case accused 1 and 2 also are of death are likely to be successful.

1 p/1-3 CF 8

18.5.34

21/5/34

21/5

To the P.P./~~Crown Prosecutor~~, Madras, with a copy of the D.M.'s letter/~~letter of the Commissioner of Police~~, and its encl. in original to be returned with reply.

4-21 CF

Note.

Date of Judgment 12.4.34

" expiry of usual appeal time of three months } 11.7.34

No limit of time for filing criminal revision petitions.

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18.5.34
21/5

U.M. 30.

JUDICIAL 23 DEPARTMENT.

d-P6098B
14/7/34

Received ..... 192 Registered 14/7/34

GOVERNMENT OF MADRAS
13 JUL 1934
LAW DEPARTMENT

Subject.

Appeal against acquittal - enhancement of sentence - S.C. No. 7/34 - Sessions Judge, South Kanara - forwarding opinion.

ENCLOSURES.
No .....
.....
Spare copies .....

Opinion No. 38 of 34.

Station Madras, *Dated the* 26th June 1934.

From (Name) L. H. Bewes Esquire,

(Designation) Public Prosecutor, Madras.

To The Secretary to the Government of Madras,

Law (General) Department.

Sir,

Acknowledged

With reference to Endorsement No. 5134 P-1, Law (General) dated 21--5--1934, I have the honour to forward herewith my opinion in the matter.

2. The enclosures received with the endorsement are herewith returned.

I have the honour to be,
Sir,
Your most obedient servant,

L. H. Bewes

Public Prosecutor.

RS/26-6.

27/6.

P220/1 Endorsement No. 5134 B-1, Law (General) dated 21-8-1934.

O P I N I O N

Accused 1 to 6 who were charged with criminal conspiracy to murder one Kariappa Rai have been acquitted of that charge and Accused 1 and 2 who were specifically charged for the murder of the said Kariappa Rai were both convicted of that offence and sentenced to transportation for life.

The first question in this case is whether the acquittal of Accused 4, 5 and 6 on the charge of conspiracy is proper. As against the 6th accused who is alleged by the prosecution to have brought about the murder of Kariappa Rai, there is no reliable evidence that he had any motive to murder the deceased. Three other people who might have had motive to do away with the deceased and who were suspected at the inquest have not been charged. While the occurrence was on 5-11-1933, Accused 6 was not suspected until 17-11-1933. The evidence of P.W.3 is to the effect that the deceased and 6th accused became reconciled at the panchayat held a few days before the occurrence. Even P.W.9 the elder brother of the deceased did not suspect the 6th accused at the inquest. P.Ws 13, 12, 8 and 10 who were examined to prove conspiracy do not implicate the 6th accused. P.Ws 12 and 14 speak to events after the murder. The only other piece of evidence is the retracted confession of the 4th accused implicating the 6th accused and the learned

Judge has ri[illegible] remains uncorr[illegible]

The [illegible] Accused b, has [illegible] Sessions Jud[illegible] and in my [illegible] would be [illegible]

It i[illegible] regards Acc[illegible] confession of [illegible] as against h[illegible] other evide[illegible]

I [illegible] as against [illegible]

The [illegible] to the exha[illegible] learned Jud[illegible] consideration. [illegible] the lesser [illegible] will interfere [illegible] i the circumstance[illegible] the 2nd accused [illegible] Rai and the learne[illegible] punish[illegible]

I [illegible] sentences on Accus[illegible]

N a i r o b i,
26th June [illegible]

RS/26-6.

L. H. Bevan

[illegible]
19
25 7

LAW I-4—120—22-12-30.

*Received*_____193 *Registered*_____193 .

Criminal appeal- **Appeal against acquittal—~~Negatived~~.** accused 4 & 6. and Enhancement of Sentence passed on accused 1 and 2.
Sessns Case No. 7/34 on the file of the Sessions Judge, South Kanara
Declined

LAW (GENERAL) DEPARTMENT.

READ—the following papers :—

[C no 5134B] pp 1-3 of From the District Magistrate, South Kanara, No. C1-1942/34, dated 12-5-1934

Endorsement to the Public Prosecutor, Madras, No. 5134-B, dated 21-5-1934 p 2-4

[6698B] pp 2-4-5 of From the Public Prosecutor, Madras, No. 3834, dated 26.6.1934

ORDER—Mis. No. 2132, dated 25/7/1934.

The Government do not consider it advisable either to appeal to the High Court against the judgment of the Sessions Judge, South Kanara acquitting the accused 4 & 6 in S.C. No. 7 of 1934 on his file. A & B at p 25 cf to move for the enhancement of Sentences passed on the accused 1 and 2 in the same case:

8 24.7.34

25/7

(True Extract.)

25/7. Govt 24/7/34

S

Secretary to Government.

C. Mark 24-7-34.

To

The District Magistrate, South Kanara q pp 1-3, a pp 4 to with the Sessns Judt rets.
The Public Prosecutor, Madras. q pp 2-4-5.